

REMARKS

Claims 1 and 8 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes et al. (US 6,437,527), hereinafter Rhodes, in view of Vergara (US 5,027,553). Additionally, claims 2-4 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes and Vergara in further view of White (US 5,388,691). Claims 5-7 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes and Vergara in further view of Heitschel et al. (US 5,576,701), hereinafter Heitschel. Claim 9 has been rejected under 35 U.S.C. §102(b) as being anticipated by Heitschel. Additionally, claim 10 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Heitschel in view of Rhodes. Claims 11 and 23-26 have also been rejected under 35 U.S.C. §103(a) as being unpatentable over Heitschel and Rhodes, in further view of White. Furthermore, claims 27-30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes, Vergara, in further view of Heitschel. Finally, claims 31-35 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Rhodes, Vergara, Heitschel, in further view of Bayha (US 4,821,024).

With respect to claim 36, on page 10 of the last office action at item 14, it has been indicated that claims 31-35 are rejected, but the action fails to indicate whether claim 36 has been rejected or allowed. Claims 31-36 are referred to in the following paragraph that discusses the rejection of claims 31-35. As such, for the purpose of this response, the Applicants have treated claim 36 as if it were subject to the same rejection as claims 31-35.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Last, the prior art reference (or references, when combined) must teach or suggest all the claim limitations. Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectations of success must both be found in the prior art, and not based on the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In regard to establishing a *prima facie* case of obviousness, the initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has

done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliably suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

Prior to discussing the merits of the rejection, it is believed that a review of the teaching of the cited references is warranted. Rhodes teaches an adjunct device which is powered by an electrical outlet, and that immediately closes the garage door after a predetermined period of time. The user is required to use a separate transmitter to initiate the initial movement of the door. For example, at least at col. 4, lines 17-30, Rhodes discloses that the home owner can conveniently use their existing garage door opener remote control device to close the garage door, while having 45 seconds to drive out before the garage door automatically closes. In addition, the on/off switch taught in Rhodes only allows the adjunct device to be turned off or on to enable the auto-close mode. Moreover, Rhodes is inconveniently limited to being mounted at or near an electrical outlet. Thus, while Rhodes is able to transmit actuation signals to the garage door operator, it only does so as part of its auto-close process. Thus, Rhodes requires a separate garage door opener remote device to directly and immediately move the garage door up and down.

In a similar manner, Vergara teaches an add-on device that initiates an auto-close operation for automatically closing the door after a delay following the opening of the door. It is required that this add-on device be placed in the path of the door to detect its opening. Operational control of the device of Vergara is inconveniently positioned near a top section of the door when in an open position. And, as in Rhodes, Vergara requires the use of a separate transmitter to initiate door movement.

In distinct contrast, Applicants' claim 1 provides a wall station that includes an open/close switch allowing a user to directly and immediately move the barrier (door) between up and down positions and a manual close/auto-close selector switch carried by the wall station, wherein if an auto-close mode is selected from the selector switch, the operator automatically closes the barrier if left open for a predetermined period of time and moves the barrier upon actuation of the open/close switch. Claim 1 further sets forth that if a manual-close mode is selected from the selector switch, the operator moves the

barrier upon actuation of the open/close switch. Clearly, none of the references made of record disclose a wall station that provides both the ability to move the barrier and to select whether an auto-close mode or "manual close" mode can be selected. In other words, none of the references, singly or in combination, teach or suggest a wall station that carries both a manual close/auto-close selector switch and an open/close switch. Thus, because the proffered combination of Rhodes and Vergara do not teach each and every element of claim 1, a *prima facie* case of obviousness cannot be made. As such, the Applicants respectfully request that the rejection of claim 1, and claim 8 depending therefrom, be withdrawn.

With respect to claims 2-4, the Applicants submit that White teaches a protective case for a remote control transmitter, wherein the protective case has a slideable, clear protective cover panel that lets one see through to the remote transmitter, and which is strong enough to prevent the control buttons or switches of the transmitter from being accidentally activated (Col. 2, lines 60-64, White). However, Applicants' claim 2 provides a cover having a second position that conceals each of the switches of the wall station, while allowing actuation of the open/close switch concealed by the cover. White prevents the user from actuating any button or switch provided by a transmitter contained within the protective case when the cover panel is slid so as to conceal every button of the transmitter. In distinct contrast, claim 2 sets forth a cover positionable with respect to the panel, wherein the cover in a first position permits access to the switches and in a second position conceals both of the switches while allowing forcible movement of the cover to permit actuation of the open/close switch concealed by the cover without actuating the selector switch. As such because each and every limitation of claim 2 is not found individually or in the combination of Rhodes, Vergara, and White, the Applicants respectfully request that the rejection of claim 2 and claims 3-4 depending therefrom be withdrawn.

The Applicants submit that claims 5-7 which depend from currently amended claim 1, as previously discussed, are now allowable, as each and every limitation of claim 5 is not taught or suggested individually or by the combination of Rhodes, Vergara, and Heitschel. Although Heitschel discloses the use of a keypad transmitter, it is respectfully submitted that there is absolutely nothing in the teaching of Heitschel that allows for enablement of an auto-close mode only if a keyless entry transmitter is learned to the

operator. Likewise, nothing in Heitschel, singly or in combination, allows for enablement of an auto-close mode only if an external transmitter is learned to the operator. Therefore, the Applicants respectfully request that the rejection of claims 5-7 be withdrawn.

Claim 11 has been cancelled as most of its limitations have been incorporated into independent claim 9. As such, claim 9 has been amended to include a wall station having a panel carrying the open/close switch and the selector switch, and a cover positionable with respect to the panel, wherein the cover in a first position permits access to the switches and in a second position conceals each of the switches, while allowing only activation of the open/close switch concealed by movement of the cover. For the same reasoning as set forth in claim 2 in regard to a lack of teaching related to a movable cover actuating one of the concealed buttons, it is submitted that each and every limitation of claim 9 is not taught or suggested in Heitschel. Therefore, Applicants respectfully request that the rejection of claim 9 be withdrawn.

Claim 10 depends from amended claim 9, and therefore because each and every limitation of independent claim 9 is not taught or suggested by Heitschel and Rhodes, individually or in combination, the Applicant respectfully requests that the rejection of claim 10 be withdrawn. Indeed, claim 10 now sets forth that the at least one other switch comprises an auto-close/blocking selector switch, wherein if the selector switch is in an auto-close mode, the operator automatically closes the barrier if left open for a predetermined period of time, and wherein if the selector switch is in a blocking mode, the operator is precluded from receiving operational signals from any source other than the wall station transmitter.

Claim 27 has been amended in a similar manner and is similar to that of claim 1, as such the arguments relating to claim 1 are also applicable to claim 27. In particular, Rhodes, Vergara, and Heitschel do not teach or recite a wall station having a manual close/auto-close/block switch and an open/close switch as in claim 27. Therefore, the withdrawal of the rejection of claim 27, and claims 28-30 depending therefrom, is respectfully requested.

In addition, the arguments made with regard to claim 9 are applicable to claim 28. Therefore, it is requested that the rejection of claim 28 be withdrawn.

The rejection of claims 31-36 should be withdrawn as each and every limitation of claim 27 from which claims 31-36 depend are not taught or suggested individually or by

Application No.: 10/773,479
Attorney Docket No. WAY.P.US0095
Reply to Office Action of April 19, 2006

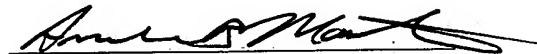
the combination of Rhodes, Vergara, Heitschel, and Bayha. In addition, claims 32 and 35 have been amended for clarification purposes to recite that the incremental closing comprises a predetermined distance and stopping. Thus, the Applicants respectfully request that the rejection of claims 31-36 be withdrawn.

Examination and allowance of new claim 49, which depends from claim 1, is also requested. New claim 49 sets forth that the wall station transmitter generates wireless operational signals that are received by the operator.

In view of the foregoing amendments and arguments presented herein, the Applicants believe that they have properly set forth the invention and accordingly, respectfully request that the Examiner reconsider and withdraw the objections and rejections provided in the last Office Action. A formal Notice of Allowance of claims 1-10, 24-36 and 49 is earnestly solicited. Should the Examiner care to discuss any of the foregoing in greater detail or have suggestions for placing the claims in better form for allowance, the undersigned attorney would welcome a telephone call.

In the event that a fee required for the filing of this document is missing or insufficient, the undersigned Attorney hereby authorizes the Commissioner to charge payment of any fees associated with this communication or to credit any overpayment to Deposit Account No. 18-0987. If a withdrawal is required from Deposit Account No. 18-0987, the undersigned Attorney respectfully requests that the Commissioner of Patents and Trademarks cite Attorney Docket Number WAY.P.0095 for billing purposes.

Respectfully submitted,



Andrew B. Morton, Reg. No. 37,400
Renner, Kenner, Grieve, Bobak, Taylor & Weber
First National Tower 4th Floor
Akron, Ohio 44308-1456
Telephone: (330) 376-1242
Facsimile: (330) 376-9646
Email: morton@rennerkenner.com

Attorney for Applicants

Attorney Docket No: WAY.P.US0095